REMARKS

After entry of this amendment, claims 1-8, 10-25, 27-34, and 36-41 are pending. In the present Office Action, claims 16-17 were rejected under 35 U.S.C. § 112, second paragraph. Claims 1-13 and 19-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Vert et al., U.S. Patent No. 6,360,331 ("Vert"). Claims 14-15 and 17-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vert in view of Dinker et al., U.S. Patent No. 6,944,788 ("Dinker"). Applicants respectfully traverse these rejections and request reconsideration.

Section 112 Rejection

The Office Action asserts that claims 16 and 17 recite "wherein the lack of success [in the failing over] is due to a lack of an eligible node", but base claim 1 recites "failing the application over from the first node to a second node" which is contradictory. Applicants respectfully disagree. However, Applicants have rewritten claim 16 in independent form (and amended claim 17 to depend from claim 16). The amendment to claim 16 incorporates the features of claims 1 and 14, from which claim 16 was dependent, but changes the "failing the application over" feature to "attempting to failover the application". Applicants respectfully submit that the amendments obviate the section 112 rejection.

Applicants note that there was no art rejection lodged against claim 16. Accordingly, claim 16 is in condition for allowance. Claim 17, dependent from claim 16, is also in condition for allowance.

Art Rejections

Applicants respectfully submit that each of claims 1-8, 10-15, 18-25, 27-34, and 36-41 recite combinations of features not taught or suggested in the cited art. For example, claim 1 recites a combination of features including: "detecting that an application in a first node is to failover...adding a second node to the cluster responsive to the detecting;...and failing the application over from the first node to the second node".

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With respect to original claim 9, the Office Action asserts that Vert teaches adding a node to a cluster, citing col. 4, line 63 to col. 5, line 5. These teachings are: "To create a new cluster, a system administrator runs a cluster installation utility on a system that then becomes a first member of the cluster 58. For a new cluster 58, a database is created and the initial cluster member information is added thereto. The administrator then configures any devices that are to be managed by the cluster software. At this time, a cluster exists having a single member, after which the installation procedure is run on each of the other members of the cluster. For each added member, the name of the existing cluster is entered and the new system receives a copy of the existing cluster database." While these teachings generally describe a mechanism for adding nodes to a cluster, they do not teach or suggest "adding a second node to the cluster responsive to the detecting [that the application is to failover]". Rather, these teachings appear to relate to adding members to a cluster at cluster creation time, prior to beginning application execution.

For at least the above stated reasons, Applicants respectfully submit that claim 1 is patentable over the cited art. Claims 2-8, 10-15, 18, and 39 depend from claim 1 and thus are patentable over the cited art for at least the above stated reasons as well. Each of claims 2-8, 10-15, 18, and 39 recite additional combinations of features not taught or suggested in the cited art.

Claim 19 recites a combination of features including: "detect that an application in a first node is to failover...add a second node to the cluster responsive to detecting that the application is to failover; ...and failover the application from the first node to the second node." The same teachings of Vert highlighted above with regard to claim 1 are alleged to teach the above highlighted features of claim 19. Applicants respectfully submit that Vert does not teach or suggest the above highlighted features, either. Accordingly, claim 19 is patentable over the cited art. Claims 20-25, 27-30, and 40 depend from claim 19 and thus are patentable over the cited art for at least the above stated reasons as well. Each of claims 20-25, 27-30, and 40 recite additional

combinations of features not taught or suggested in the cited art.

Claim 31 recites a combination of features including: "wherein the third node is added to the cluster responsive to the detection that the application is to failover from the second node during use". The same teachings of Vert highlighted above with regard to claim 1 are alleged to teach the above highlighted features of claim 31. Applicants respectfully submit that Vert does not teach or suggest the above highlighted features, either. Accordingly, claim 31 is patentable over the cited art. Claims 32-34, 36-38, and 41 depend from claim 31 and thus are patentable over the cited art for at least the above stated reasons as well. Each of claims 32-34, 36-38, and 41 recite additional combinations of features not taught or suggested in the cited art.

CONCLUSION

Applicants submit that the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-13900/LJM.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

☐ Petition for Extension of Time

☐ Request for Approval of Drawing Changes

☐ Notice of Change of Address

☒ Please debit the above deposit account in the amount of $380 for fees ($200 for one excess independent claim, $180 IDS fee).

☒ Other: IDS

Respectfully submitted,

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